IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-AS-146-2025 (O&M)
Date of decision: 16.09.2025

SURENDRA GLASS HOUSE ......Petitioner

VERSUS

HARSH ....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Vaibhav Parashar, Advocate
for the appellant.

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<u>VINOD S. BHARDWAJ, J. (Oral)</u>

<u>CRM-40715-2019</u>

Prayer in the application is for condonation of delay of 79 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and delay of 79 days in filing the appeal is condoned.

<u>CRM-A-2911-2019</u>

The present application filed under Section 378(4) Cr.P.C. is hereby allowed for the reasons mentioned in the application and leave to appeal is granted to the applicant to challenge the impugned judgment dated 05.07.2019 passed by the Sessions Judge, Faridabad.

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Appeal be registered and the same is taken up on Board today itself for arguments.

CRA-AS-146-2025

The instant appeal has been filed by the appellant against the judgment of acquittal passed by the Sessions Judge, Faridabad whereby the judgment of conviction dated 26.09.2016 and the order of sentence dated 30.09.2016 passed in Complaint No. 2244 of 09.01.2015 by the Judicial Magistrate 1st Class has been set aside and the respondent-accused has been acquitted.

2. Briefly summarized the facts of the present case are that the appellant-complainant filed the complaint case No. 2244 of 2015 on the grounds that he is proprietor of the appellant-Firm and had family relations with the respondent-accused. He advanced a sum of Rs. 10 lakhs to him as a friendly loan in lieu whereof cheque bearing No. 265842 dated 01.08.2014 drawn on Syndicate Bank for a sum of Rs. 10 lakhs was issued in his favour by the respondent-accused. When the said cheque was presented in the Bank for encashment, the same was returned as unpaid vide return memo dated 20.08.2014 with remarks “Funds Insufficient”. It is further averred that on assurance of the respondent-accused, the cheque was presented again but the same dishonoured again on 25.09.2014 and then on 31.10.2014. Thereafter, legal notice dated 27.11.2014 was sent to the respondent-accused calling upon him to make the payment, however, as the payment had not been made, hence, the complaint was filed. On notice having been served, the respondent-accused appeared. Parties also led their respective evidence. No

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defence evidence was however led by the respondent-accused. The matter was argued at length and upon consideration of the evidence led by the respective parties, the trial Court convicted the respondent-accused for commission of offence under Section 138 of the Negotiable Instruments Act vide judgment dated 26.09.2016 and sentenced him to undergo a simple imprisonment for a period of six months alongwith awarding a compensation of Rs. 15 lakhs.

3. Aggrieved thereof, the respondent-accused preferred an appeal before the Sessions Judge, Faridabad. Vide judgment dated 05.07.2019, the Sessions Judge, Faridabad acquitted the respondent-accused, hence, the present appeal.

4. Learned Counsel appearing on behalf of the appellant has raised the following arguments:-

i) That the Appellate Court has failed to take into consideration Ex. C7 which was the account statement and it reflected that the appellant had withdrawn a sum of Rs. 10 lakhs before advancing a loan. Referring to the above, he contends that the appellant established that he had the financial capability of advancing loan and the said amount having been withdrawn soon before the transaction corroborates the case of the appellant of having advanced the aforesaid loan to the respondent-accused.

ii) That the sole defence taken by the respondent was that he had issued the cheque in favour of one Hukam Singh which fell into the hands of complainant and he misused the same. However, in his defence evidence,

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he never got Hukam Singh examined. Hence, the defence version remains unestablished.

iii) Counsel further contends that the finding recorded by the Appellate Court that no friendly relations existed between the parties is false and incorrect since the appellant had specifically submitted in his testimony that the respondent-accused was known to him. Moreover their villages are nearby which establishes old relations between the parties.

iv) He further submits that the necessary ingredients for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 had been duly satisfied, hence, the judgment of conviction as passed by the Judicial Magistrate 1st Class, Faridabad ought to have been affirmed.

5. I have heard learned Counsel appearing on behalf of the appellant and have gone through the judgments impugned by him before this Court.

6. Before proceeding further in the matter, it would be apposite to make a reference to the operative part of the judgment passed by the Sessions Judge in the appeal preferred by the respondent-accused. The same reads thus:-

> "*22. In the present case, various circumstances have been rightly pointed out by learned counsel for the appellant-accused, which probalize the defence of the accused and go on to show that there was no liability of the accused so as to pay the cheque amount to the complainant.*
>
> *23. First of all, it is to be noted that according to complainant, he advanced friendly loan of 10 lacs to the*

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accused on 05.10.2013 after withdrawing this amount from his bank i.e. ICICI Bank Limited. No document whatsoever like any receipt, pronote, agreement etc. was executed so as to advance the huge loan of ₹10 lacs to the accused, as admitted by CW1 Rajbir in his cross-examination. This is despite the fact that there are no old or friendly relations amongst the parties as emerged in the cross-examination of CW1 Rajbir. According to him, he had meetings with accused Harsh twice or four times. There is distance of about 15 kilometers between his village and that of Harsh. He did not have any transaction with the accused at any point of time. Accused never purchased any material nor had any other bargain with the complainant at any point of time. CW1 further says that he only knows parents of accused Harsh and not any other family member. He is not even aware as to in which Mohalla of the village, accused resides.

24. In the aforesaid circumstances, when accused clearly appears to be an unknown person to the complainant except for occasional meetings; with whom he did not have any friendly relations; who did not have any transaction with him at any point of time; and who never purchased any article from him at any point of time, it is unbelievable that complainant will advance huge amount of 10 lacs to the accused without getting executed any receipt, affidavit or any other document evidencing the payment and that too for a period of nine months and without agreeing for any interest.

25. Had the complainant made the payment of 10 lacs to the accused by way of cheque or draft or bank transfer or any mode, which could evidence the advancing of loan, the Court would have believed the version of complainant advancing the money to the accused, even if no receipt or any other document was executed for this purpose. However, it is not so. Ex.C7 is the bank statement of account of Surendra Glass House i.e.

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complainant, which reveals that on 05.10.2013, an amount of 10 lacs had been withdrawn by the complainant in cash for self. However, there is no evidence that the amount of 10 lacs so withdrawn by the complainant, was in fact paid to the accused. I agree with the contention of learned counsel for the appellant-accused that like 10 lacs shown to be withdrawn in cash by the complainant on 05.10.2013, there are entries in Ex.C7 showing withdrawal of 4 lacs on 04.10.2013 and 2,25,000/- on 03.10.2013 in cash by the complainant but it does not mean that amount was paid by the withdrawer i.e. complainant to anybody else. In case complainant had to advance the loan of 10 lacs to the accused, he could have easily transferred the amount directly in the account of the accused or could have issued cheque or draft in his favour. As such, no benefit can be given to the complainant of the entry in Ex.C7 showing withdrawal of 10 lacs by him in cash on 05.10.2013.

26. Proceeding further, if the case of the complainant to be read with Ex.C7 is assumed to be true, it means the amount of 10 lacs was withdrawn from the account of Surendra Glass House i.e. firm owned by Sh. Rajbir CW1 and therefore, it is to be reasonably assumed that there must be necessary entry in the lodger book of the complainant firm. However, it is not so.

CW1 Rajbir the proprietor of complainant tendered his affidavit Ex.CW1/A to support his case. He was subjected to cross-examination on three different dates. His first cross-examination was conducted on 15.01.2016, during which he disclosed that his shop by the name of 'Surendra Glass House' is 8-9 years old but he has not taken any sales tax number. He stated that Income Tax return of the firm is being filed for the last 6-7 years, in which all the transactions are shown. He also disclosed that he could produce the Income Tax return as well as balance-sheet for the year 2013-14. At this stage, cross-

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examination of CW1 Shri Rajbir was deferred with the direction to produce the above-said documents.

CW1 then appeared on 08.04.2016 for his further cross-examination but on adjourned date, did not produce the Income Tax return of Surendra Glass House and rather, produced the copy of his personal Income Tax return as Ex.R1. He pleaded ignorance as to whether Ex.R1 reflects any transaction pertaining to Surendra Glass House, stating that his Chartered Accountant might be knowing the same. He further disclosed that firm maintains regular ledger/statement of account and that he can produce the same. Cross-examination of CW1 was again deferred with the direction to bring the above-said record.

CW1 Rajbir then appeared on 13.05.2016 for the third time for his cross-examination but again he failed to produce the ledger of the firm stating that he did not have any such ledger. He further stated that he did not maintain any bill book.

27. It is thus evident from the above-said statement of CW1 Rajbir that he changed his version on different dates. Initially, he stated that all the transactions of the firm are duly shown in the Income Tax return and that he can produce the Income Tax return as well as balance-sheet of the firm. Despite repeated opportunities given to him, he neither produced the Income Tax return of the complainant firm nor the statement of account/ledger so as to show advancing the loan of 10 lacs by the complainant firm to the accused on 05.10.2013.

28. As noticed earlier that evidence on file do not reveal any friendly relations between the parties. No document was executed at the time of advancing the alleged loan. The amount is allegedly withdrawn from the account of the complainant firm as per Ex.C7 but no ledger account or balance-sheet of the

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firm is shown to reveal the corresponding entry. No witness has been examined by the complainant to show advancing the loan to the accused in his presence.

29. As per the defence pleaded by the accused, he never issued the cheque in favour of the complainant. During cross-examination, CW1 Rajbir admitted that he knows one Hukam Singh Master for the last 15 years though denied his relationship with the wife of said Hukam Singh namely Jalwati. He specifically denied that said Hukam Singh is his Foofa (father's sister's husband). He denied that he did not give any money to accused Harsh and rather, cheque was handed over to him by Hukam Singh.

30. In the entire facts and circumstances as have emerged in the above discussion, the defence of the accused is quite probable that he did not take any amount from the complainant and rather, his cheque given to one Hukam Singh fell in the hands of complainant, who misused the same and filed this complaint.

31. On account of entire discussion as above, it is held that judgment of conviction and order of sentence as passed by learned trial Court cannot be sustained in the eyes of law. A strong benefit of doubt is given to the appellant-accused and he is acquitted of the charge by setting aside the impugned judgment of conviction and order of sentence passed by learned trial Court. Appeal is accordingly accepted.

7. It is thus evident from perusal of the above that the Appellate Court has specifically recorded that the Appellant had although undisputedly adduced the Account statement Ex. C-7 which showed that he had withdrawn amount from the Bank Account to the tune of Rs. 10 lakhs, however, mere proving withdrawal of the amount does not amount to

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proving of having advanced the withdrawn money as a friendly loan to the respondent-accused. Further, it is also recorded by the Sessions Judge, Faridabad that no document of any nature whatsoever had been executed between the appellant as well as the respondent-accused showing that the amount of friendly loan (as claimed) had actually been advanced. The manner in which the transaction is claimed to have taken place was further doubted by recording that in the cross-examination, the appellant had itself admitted that he met the respondent-accused only two or four times. Hence, the claim of the appellant that he had old friendly relations with respondent-accused was not substantiated or established. It was also noticed that the respondent-accused stated that there is a distance of more than 15 kilometres between the village of the appellant and respondent and that the appellant was also not aware of the actual residential address of respondent. Apart from the parentage he was not aware of any other particulars of the respondent-accused. The plea of the appellant that the amount of Rs. 10 lakhs had been advanced in view of the old friendly relations between the parties stood belied for want of awareness of those primary details which a friend would ordinarily know in an old long-standing relationship. Hence, the circumstances in which the amount in question is stated to have been advanced was not established.

8. It is also recorded by the Sessions Court that even though an opportunity was granted to the appellant to establish from the Income Tax returns of the relevant years reflecting the transaction of the friendly loan having been advanced to the respondent, however, notwithstanding granting

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of multiple opportunities, the requisite Income Tax returns were never brought on record. Instead, the appellant placed on record his personal returns and not the returns of the Firm. Further, there were no compelling circumstances under which such a huge amount of Rs. 10 lakhs would have been advanced to the respondent without executing any documentary paperwork. Apart therefrom, the appellant also admitted that he knew of Hukam Singh although he denied his relationship.

9. Taking note of all the circumstances and holding that the appellant could not establish that there was any legally enforceable liability in lieu whereof the cheque in question may have been issued to him, the complaint was dismissed and the respondent-accused was acquitted. The account statement was thus held as a document which could at best be a proof of the capacity but not a proof of payment. The said finding cannot be said to be improbable or being an incorrect interpretation of the evidence. Even though there is a presumption in favour of holder of an instrument but such presumption is rebuttable. The primary burden to prove the pleaded case as per the complaint lay upon the complainant. Since the case set up was that the cheque was issued in discharge of the friendly loan, the onus to prove advancement of loan lay on the complainant himself.

10. Now adverting to the argument of the appellant that the necessary ingredients of Section 138 of the Negotiable Instruments Act, 1881 stood discharged by him. Even though, the Negotiable Instruments Act, 1881 raises a presumption of holder of cheque being a holder in due course and against a legally enforceable liability, however, the same does

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not mean that the burden to prove that the cheque in dispute had been issued against a lawful discharge of liability is dispensed with. In the event of the accused creating sufficient doubt of the cheque having not been issued in discharge of any enforceable liability, the onus falls upon the complainant to establish that he is holder of the cheque in due course. In the present case, the appellant had miserably failed to lead any evidence as would show that there was any enforceable debt or liability to be discharged by the respondent-accused to the petitioner. The existence of the friendly relationship or the payment of loan having not been proved, the case of the appellant rather rests on the failure of the respondent-accused to produce Hukam Singh in his defence evidence. A specific suggestion had been given that Hukum Singh was Fufa (Husband of paternal aunt-father's sister) It would thus not have been possible to bring him to step in the witness box. But notwithstanding the said failure, the complainant cannot rest his case on failure of the accused and is required to stand on his own legs.

11. It was in the said circumstances that the judgment of acquittal has been passed. The position in law is well established that if two views are possible on scrutiny of an evidence, the view as would favour an accused is to be accepted as compared to the view which is likely to indict a person.

12. Counsel for the appellant has not been able to refer to any judgment on the basis whereof it may be held that the view adopted by the Sessions Court was not a probable opinion. In a judgment of acquittal, the High Court would not ordinarily substitute its opinion for that of the Sessions Court and convert a finding of acquittal into a finding of conviction

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unless any illegality, perversity or impropriety, as would vitiate the final outcome, is established from the record. In the absence thereof, I find no grounds to interfere in the judgment of acquittal. The present appeal is accordingly **dismissed.**

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 16, 2025
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

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